

1 BILL NO. S-82-04-25

2 SPECIAL ORDINANCE NO. S-7982

3 AN ORDINANCE approving a contract for
4 Water Main Contract 82-XP-1, between
5 The City of Fort Wayne, Indiana, and
6 Earth Construction & Engineering, Inc.,
for the installation of a 6" diameter
water main.

7 BE IT ORDAINED BY THE COMMON COUNCIL OF THE CITY OF
8 FORT WAYNE, INDIANA:

9 SECTION 1. That a certain contract, dated April 14,
10 1982, between the City of Fort Wayne, Indiana by and through
11 its Mayor and the Board of Public Works and Earth Construction
12 and Engineering, Inc., for:

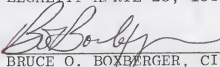
13 a 6" diameter water main across the St.
14 Marys River from the west end of Wildwood
Avenue westward 380+ L.F. to Gruber Avenue,

15 under Board of Public Works Water Main Constract 82-XP-1, at
16 a total cost of \$18,491.00, all as more particularly set forth
17 in said Contract which is on file in the Office of the
18 Board of Public Works and is by reference incorporated herein
19 and made a part hereof, be and the same is in all things hereby
20 ratified, confirmed and approved.

21 SECTION 2. That this Ordinance shall be in full force and
22 effect from and after its passage and approval by the Mayor.

23 
24 COUNCILMEMBER

25
26 APPROVED AS TO FORM AND
27 LEGALITY APRIL 23, 1982

28 
29 BRUCE O. BOXBERGER, CITY ATTORNEY
30
31
32

Read the first time in full and on motion by Burns,
seconded by Stier, and duly adopted, read the second time
by title and referred to the Committee City Utilities (and the City
Plan Commission for recommendation) and Public Hearing to be held after
due legal notice, at the Council Chambers, City-County Building, Fort Wayne,
Indiana, on _____, the _____ day of _____,
19____, at _____ o'clock _____ M., E.S.T.

DATE: 4-27-82

Charles W. Westerman
CHARLES W. WESTERMAN - CITY CLERK

Read the third time in full and on motion by Burns,
seconded by Stier, and duly adopted, placed on its
passage. PASSED (LOST) by the following vote:

	AYES	NAYS	ABSTAINED	ABSENT	TO-WIT:
TOTAL VOTES	<u>8</u>	<u>0</u>	_____	<u>1</u>	_____
BRADBURY	<u>X</u>	_____	_____	_____	_____
BURNS	<u>X</u>	_____	_____	_____	_____
EISBART	<u>X</u>	_____	_____	_____	_____
GIAQUINTA	<u>X</u>	_____	_____	_____	_____
NUCKOLS	_____	_____	_____	<u>X</u>	_____
SCHMIDT	<u>X</u>	_____	_____	_____	_____
SCHOMBURG	<u>X</u>	_____	_____	_____	_____
STIER	<u>X</u>	_____	_____	_____	_____
TALARICO	<u>X</u>	_____	_____	_____	_____

DATE: 5-11-82

Charles W. Westerman
CHARLES W. WESTERMAN - CITY CLERK

Passed and adopted by the Common Council of the City of Fort Wayne,
Indiana, as (ZONING MAP) (GENERAL) (ANNEXATION) (SPECIAL)

(APPROPRIATION) ORDINANCE (RESOLUTION) NO. 79-82
on the 11th day of May, 1982.

ATTEST:

(SEAL)

Charles W. Westerman
CHARLES W. WESTERMAN - CITY CLERK

Samuel J. Talarico
PRESIDING OFFICER

Presented by me to the Mayor of the City of Fort Wayne, Indiana, on
the 12th day of May, 1982, at the hour of
11:00 o'clock A.M., E.S.T.

Charles W. Westerman
CHARLES W. WESTERMAN - CITY CLERK

Approved and signed by me this 13th day of May
1982, at the hour of 4 o'clock P.M., E.S.T.

Win Moses, Jr.
WIN MOSES, JR. - MAYOR

BILL NO. S-82-04-25

REPORT OF THE COMMITTEE ON CITY UTILITIES

WE, YOUR COMMITTEE ON City Utilities TO WHOM WAS REFERRED AN
ORDINANCE approving a contract for Water Main Contract 82-XP-1,
between The City of Fort Wayne, Indiana, and Earth Construction &
Engineering, Inc., for the installation of a 6" diameter water main

HAVE HAD SAID ORDINANCE UNDER CONSIDERATION AND BEG LEAVE TO REPORT
BACK TO THE COMMON COUNCIL THAT SAID ORDINANCE DO PASS.

PAUL M. BURNS - CHAIRMAN

MARK E. GIAQUINTA - VICE CHAIRMAN

JAMES S. STIER

JANET G. BRADBURY

ROY J. SCHOMBURG

5-11-82

CONCURRED IN

DATE CHARLES W. WESTERMAN, CITY CLERK

BOARD ORDER NO. 112-81

WORK ORDER NO. 63519

THIS CONTRACT made and entered into in triplicate this 14th day of April, 1982, by and between Earth Construction & Engineering, Inc., herein called CONTRACTOR, and the City of Fort Wayne, Indiana, an Indiana Municipal Corporation, acting by and through the Mayor and the Board of Public Works, herein called OWNER,

WITNESSETH, that the Contractor and the Owner, for the considerations hereinafter named, agree as follows:

ARTICLE I. SCOPE OF WORK

Contractor shall furnish all labor, material, equipment, tools, power, transportation, miscellaneous equipment, etc., necessary to install a 6" diameter water main including all necessary fittings as follows:

Across the St. Marys River from the west end of Wildwood Avenue westward 380+ L. F. to Gruber Avenue,

all according to Fort Wayne Water Utility drawing No. Y-10557, Sheets 1 and 2, and do everything required by this Contract and the other documents constituting a part hereof.

ARTICLE 2. THE CONTRACT SUM

The Owner shall pay Contractor for the performance of the Contract the unit price sum of eighteen thousand, four hundred ninety-one dollars and no cents (\$18,491.00). In the event the amount of work is increased or decreased by Owner, the Contract sum shall be increased or decreased according to the unit price schedule set forth in the Contractor's Proposal.

ARTICLE 3. PROGRESS PAYMENTS

The Owner shall make payments on account of the Contract as provided herein, as follows:

Monthly progress payments will be made by Owner upon submission of a statement of quantities of work completed and/or materials supplied to the job site as of the end of each month. On or about the 15th day of the following month, ninety (90%) percent of the value of the work performed up to the first day of that month (based on the Contract price of labor and materials incorporated in the work) and as estimated by the Contractor and approved or revised by the Water Engineering Department less the aggregate of previous payments, will be paid by Owner to the Contractor.

ARTICLE 4. ACCEPTANCE AND FINAL PAYMENT

Final payment shall be due at the time the work is fully completed and accepted and the Contract is fully performed.

Upon filing of a Completion Affidavit by the Contractor that the work is ready for final inspection and acceptance, the Board of Public Works will direct the Water Engineering Department to promptly make such inspection. When the Engineering Department finds the work acceptable under the Contract, and the Contract is fully performed, it shall so inform the Board of Public Works which shall issue a final certificate stating that the work provided for in this Contract has been completed and is accepted. Thereupon the entire balance of the Contract sum shall be due and payable to the Contractor; provided only that Contractor shall first furnish Owner, if requested to do so, satisfactory evidence that all persons who have supplied labor, material, or equipment for the work have been fully paid.

ARTICLE 5. WORKMEN'S COMPENSATION ACT

The Contractor will furnish immediately a certificate from the Industrial Board of the State of Indiana, that he has complied with the Workmen's Compensation Act in accordance with Section 14 of the Compensation Act. (I. C. 22-3-2-1).

Any judgment rendered against the City of Fort Wayne in any suits for damages for injury to real or personal property, or for any injury sustained by any person growing out of any act or doing of Contractor, or its agents, employees or workmen and that any judgment of any court or award of any Board of Arbitrators or of the State Industrial Board of the State of Indiana rendered against the City of Fort Wayne in any suit or claim arising under said Workmen's Compensation Acts of the State of Indiana, now or hereafter in force, relating to compensation for accidental injuries or death suffered by his employees or the employees of a Sub-contractor or Subcontractors in the course of their employment, when notice of the pendency of such suit, hearing or arbitration shall have been given said Contractor, shall be conclusive against Contractor as to amount, liability and all other things pertaining thereto; it being the intent of the parties hereto that Contractor indemnify and hold harmless City in the premises.

ARTICLE 6. NONDISCRIMINATION OF LABOR

The Contractor further agrees to be bound by Section 15-13 (as amended), of the Code of the City of Fort Wayne, Indiana of 1974, passed by the Common Council of the City of Fort Wayne, Indiana as General Ordinance No. G-34-78 (as amended) on December 12th, 1978, a copy of which Section is by this reference incorporated herein and made a part hereof.

ARTICLE 7. PREVAILING WAGE SCALE

The Contractor agrees to pay and also require of his subcontractors that they pay wage rates on the work covered by this Contract which shall not be less than the prescribed scale of wages as determined pursuant to the provisions of Chapter 319 of the Acts of the General Assembly of the State of Indiana, of 1935, which is by this reference incorporated herein and made a part hereof.

ARTICLE 8. COMPONENT PARTS OF THIS CONTRACT

The following documents are as fully a part of the Contract as if hereto attached or herein repeated:

- a. Advertisement for Bids, for Contract No. 82-XP-1
- b. Instructions to Bidders for Contract No. 82-XP-1
- c. Contractor's Proposal Dated March 3, 1982.
- d. Fort Wayne Water Utility Engineering Department Drawing No. Y-10557, Sheets 1 and 2
- e. Supplemental Specification for Contract No. 82-XP-1
- f. Detailed Specifications and Conditions for the Installation of Transmission and Distribution Mains of the Fort Wayne Water Utility.
- g. Construction Standards and Water Main and Water Service Materials Standards of the Fort Wayne Water Utility, Engineering Department, latest revision, except as modified in the Supplemental Specifications.
- h. Workman's Compensation Act (I. C. 22-3-2-1).
- i. Non Discrimination of Labor, General Ordinance No. G-34-78 (as amended).
- j. Prevailing Wage Scale.
- k. Performance and Guaranty Bond.

ARTICLE 9. GUARANTEE OF WORKMANSHIP

At the time of execution of this Contract, the Contractor shall furnish a Performance and Guaranty Bond in favor of the City of Fort Wayne in the amount of the total value of the materials supplied and/or work performed under the terms of this Contract. The said bond shall ensure the completion of the work covered hereunder and shall guarantee the materials and workmanship for a period of one (1) year following written acceptance of the water main by the City.

ARTICLE 10. INDEMNITY

Contractor shall furnish to Owner, within ten (10) days of the date hereof, a certificate from an insurer acceptable to Owner showing personal injury and property damage insurance, in force and issued in connection with the work to be performed under this Contract, in amounts satisfactory to Owner.

ARTICLE 11. ADJUSTMENTS OF DISPUTES

All questions or controversies which may arise between the Contractor and the Owner under the provisions of this Contract shall be subject to the decision of the Chief Engineer of the Fort Wayne Water Utility, and his decision shall be final and conclusive upon the parties. No changes in the plans, specifications, or other phases or the work covered by this Contract will be permitted except on prior written authorization by the Board of Public Works.

ARTICLE 12. COMPLETION DATE

The Contractor agrees to complete the work specified in the Contract within 45 consecutive calendar days after having been ordered by the Owner to commence work under this Contract.

ARTICLE 13. COUNCILMANIC APPROVAL

This Agreement, although executed on behalf of the Owner by the Mayor and Board of Public Works of the City of Fort Wayne, Indiana, shall not be binding upon the Owner unless and until the same shall have been ratified and approved by the Common Council of the City of Fort Wayne, Indiana, and should said Common Council fail to approve the same within ninety (90) days after the date hereof, then this Contract shall be and become wholly void.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement the day and year first above written.

EARTH CONSTRUCTION & ENGINEERING, INC.

By: Jack Braun
Jack Braun, President

By: Gerald Osterman
Gerald Osterman, Secretary

By: Jeanne Loughheed
Jeanne Loughheed, Treasurer

BOARD OF PUBLIC WORKS

Stephen A. Bailey
Stephen A. Bailey, Chairman

Roberta Anderson Staten
Roberta Anderson Staten, Member

Betty R. Collins
Betty R. Collins, Member

ATTEST:

Sandra E. Kennedy
Sandra E. Kennedy, Clerk

APPROVED AS TO FORM AND LEGALITY:

R. J. [Signature]
CITY ATTORNEY
ASSOCIATE CITY ATTORNEY

Approved by the Common Council of the City of Fort Wayne on _____ day of _____, 1982.

Special Ordinance No. _____.

10-10-10-10
\$ 15,000.00

CITY OF FORT WAYNE, INDIANA
IMPROVEMENT TO FORT WAYNE WATER UTILITY

PERFORMANCE AND GUARANTY BOND

KNOW ALL MEN BY THESE PRESENTS, that we Earth Construction & Engineering, Inc.
(Contractor or Developer) as Principal, and the American States
(Insurance Company), a corporation organized under the laws of the State of
Indiana (State and Date), and duly authorized to transact
business in the State of Indiana, as Surety, are held firmly bound unto the City
of Fort Wayne, Indiana, an Indiana Municipal Corporation in the sum of \$18,491.,
(value of work) for the payment whereof well and truly to be made, the Principal
and the Surety bind themselves, their heirs, executors, administrators, successors
and assigns, jointly and severally, firmly by those present. The condition of
the foregoing obligation is such that

WHEREAS, the Principal has entered into contract with the City or has applied
for authority to construct or cause to be constructed, a water main to become
part of the City's water distribution system, which said water main is to be
built and constructed according to plans and specifications prepared by or
approved by City and known as the Wildwood Avenue River Crossing Res. #82-XP-1, and
(Name of Project)

WHEREAS, the grant of authority by City to so construct such water main provides:

1. That said water main shall be completed according to said plans and specifica-
tions, and there shall be filed with the City, within thirty (30) days
after completion, a Completion Affidavit;
2. Said Principal is required to agree to make such adjustments, modifications,
and repairs as required by the City within thirty (30) days after notice;
and,
3. To agree to maintain said water main for a period of one (1) year following
written acceptance by the City of said water main; and,

WHEREAS, said Surety, for value received, hereby stipulates and agrees that no
change, extension of time, alteration, or addition to the terms of the contract
or to the work to be performed thereunder, or the specifications accompanying
the same, shall in any way affect its obligation on this bond, and it does

hereby waive notice of any such change, extension of time, alteration or addition to the terms of the contract, or to the work or to the specifications, and

WHEREAS, no change, modification, omission, or addition in and to the terms or conditions of said contract, plans, specifications, drawings, or profile, or any irregularity or defect in said contract or in the proceedings preliminary to the letting and awarding thereof shall in any way affect or operate to release or discharge said surety and the provisions and conditions of I.C. (5-16-5-1) of the shall be, operate as, and be a part of the terms of this bond and said contract the same as if spelled out herein verbatim.

NOW THEREFORE, if the principal shall perform all of the terms and conditions required of it by the contract to cause said water main to become a part of the City water distribution system, and shall for one (1) year after acceptance of said water main by City maintain said water main and shall indemnify the City for all loss that City may sustain by reason of the Principal's failure to comply with any of the terms of the authorization, then this obligation shall be void, otherwise it shall remain in full force and effect.

ATTEST:

Donald W. Peterson

Secretary

(Title)

Earth Construction & Engineering, Inc.
(Contractor or Developer)

BY:

Earl Brown
(Name)

President

(Title)

American States Insurance Company
(Insurance Company) Surety

*BY:

W. L. Hoffmeyer
Authorized Agent

*If signed by an agent,
power of attorney must be attached

American States Insurance Company

INDIANAPOLIS, INDIANA

KNOW ALL MEN BY THESE PRESENTS, that American States Insurance Company, a Corporation duly organized and existing under the laws of the State of Indiana, and having its principal office in the City of Indianapolis, Indiana, hath made, constituted and appointed, and does by

these presents make, constitute and appoint GERALD C. KRAMER, BERNARD M. NIEZER, LOUIS H. ANDREWS,
CURTIS C. HILL, GERALD C. KRAMER, JR., FRED L. TAGTMEYER AND WALTER E. MANSKE-----

(Jointly or Severally)

of Fort Wayne and State of Indiana
 its true and lawful Attorney(s)-in-Fact, with full power and authority hereby conferred in its name, place and stead, to execute, acknowledge and

deliver any and all bonds, recognizances, contracts of indemnity and other conditional or obligatory undertakings, provided,

however, that the penal sum of any one such instrument executed hereunder shall

not exceed TWO MILLION AND NO/100 (\$2,000,000.00) DOLLARS-----

and to bind the Corporation thereby as fully and to the same extent as if such bonds were signed by the President, sealed with the common seal of the Corporation and duly attested by its Secretary, hereby ratifying and confirming all that the said Attorney(s)-in-Fact may do in the premises. This Power of Attorney is executed and may be revoked pursuant to and by authority granted by Section 7.07 of the By-Laws of the American States Insurance Company, which reads as follows:

"The Chairman of the Board, the President or any Vice-President shall have power, by and with the concurrence with the Secretary or any Assistant Secretary of the Corporation, to appoint Resident Vice-Presidents, Resident Assistant Secretaries and Attorney-in-Fact as the business of the Corporation may require or to authorize any one of such persons to execute, on behalf of the Corporation, any bonds, recognizances, stipulations and undertakings, whether by way of surety or otherwise"

IN WITNESS WHEREOF, American States Insurance Company has caused these presents to be signed by its Vice-President, attested by its

Assistant Secretary and its corporate seal to be hereto affixed this 29th day of January

A. D. 19 82

(SEAL)

ATTEST:

Thomas M. Ober
 Assistant Secretary

AMERICAN STATES INSURANCE COMPANY

By

Alanson T. Abel
 Assistant Vice-President

STATE OF INDIANA }
 COUNTY OF MARION } SS:

On this 29th day of January, A. D., 19 82, before me personally came

Alanson T. Abel

, to me known, who being by me duly sworn, acknowledged the execution of the above instrument and did depose and say; that he is a Vice-President of American States Insurance Company; that he knows the seal of said Corporation; that the seal affixed to the said instrument is such corporate seal; that it was so affixed by authority of the Board of Directors of said Corporation; and that he signed his name thereto under like authority. And said

Alanson T. Abel further said that he is acquainted with Thomas M. Ober and knows him to be the Assistant Secretary of said Corporation; and that he executed the above instrument.

MY COMMISSION EXPIRES

February 14, 1984

My Commission Expires

STATE OF INDIANA }
 COUNTY OF MARION } SS:

Thomas M. Ober

, the Assistant Secretary of AMERICAN STATES INSURANCE COMPANY, do hereby certify that the above and foregoing is a true and correct copy of a Power of Attorney, executed by said AMERICAN STATES INSURANCE COMPANY, which is still in full force and effect.

This Certificate may be signed and sealed by facsimile under and by the authority of Section 8.03 of the By-Laws of AMERICAN STATES INSURANCE COMPANY which reads as follows:

"All policies and other instruments of insurance issued by the Corporation shall be signed on behalf of the Corporation by the president or a vice-president and the secretary or an assistant secretary, whose signatures, if the instrument is duly countersigned by an authorized representative of the Corporation, may be facsimiles. Such signatures and facsimiles thereof shall be authorized and binding upon the Corporation notwithstanding the fact that any such officer shall have ceased to be such officer at the time such policy or other instrument of insurance shall have been actually issued by the Corporation."

In witness whereof, I have hereunto set my hand and affixed the seal of said Corporation, this 14th day of April

A. D., 19 82

(SEAL)

Form 9-1459 (8-80)

Thomas M. Ober
 Assistant Secretary

049-412

STATE OF INDIANA:

SS:

COUNTY OF ALLEN:

BEFORE ME, a Notary Public, in and for said State, personally appeared

Gerald Osterman

Secretary

(name)

(title)

and

Jack Braun

President

(name)

(title)

of Earth Construction & Engineering, Inc.

and

(company)

Fred L. Tagtmeyer

Attorney in Fact, for said American States Insurance Company

as surety, with both of whom I am personally acquainted, and acknowledged that they subscribed their signatures to the above and foregoing bond, in their respective official capacities of aforesaid.

SUBSCRIBED TO, before me, a Notary Public, this 14th day of April,
19 82.

Bette L. McKinney

Notary Public

Resident of Allen County, IN.

My Commission Expires:

12/2/83

TITLE OF ORDINANCE Water Main Contract 82-XP-1, Wildwood Ave. River Crossing

DEPARTMENT REQUESTING ORDINANCE Board of Public Works

5-82-04-25

SYNOPSIS OF ORDINANCE Installation of a 6" diameter water main across the St. Marys

River from the west end of Wildwood Avenue westward 380+ L.F. to Gruber Avenue.

Earth Construction & Engineering, Inc., was awarded the contract.

EFFECT OF PASSAGE installation of needed water main

EFFECT OF NON-PASSAGE above cannot be completed

MONEY INVOLVED (DIRECT COSTS, EXPENDITURE, SAVINGS) \$18,491.00

ASSIGNED TO COMMITTEE